

DELINQUENCY, COMIC BOOKS AND THE LAW

During the 1955 legislative session, Ohio enacted a statute popularly known as the "anti-crime comic books" statute.¹ This act arose in response to a growing public demand for the curtailment not only of obscene publications but also of publications especially designed for children which tend to glorify crime, illicit sex, brutality and viciousness. With the public concern over why Johnny cannot read was apparently an equal concern over what would happen to him if he did.² There have been no reported cases of litigation concerning this statute and even a cursory examination of the literature available at the local newstand to children of all age groups indicates that the statute has been laxly, if at all, enforced. The Ohio legislature was, nevertheless, not alone in its beliefs in the dangers posed to youths in the sale of literature exemplified most graphically by crime and horror comics and sex magazines. Many legislative bodies in America and abroad have responded to the increasingly brazen publication of comic books which are "comic" in name only. Indeed, the identification of American culture with comic book portrayal of gangsters and brutality has created unfortunate misunderstandings of America in foreign readers.³ The problem of these crime comics and their effect on juvenile delinquency was and still is a real one and active measures had to be taken.

Problems created by youth going astray are not a new phenomenon. Perhaps the first recorded juvenile delinquent was Cain. Even Homer was not unacquainted with such problems when he lamented: "Gods, how the sons degenerate from the Sire."⁴ It would seem evident that fertile, imaginative, but misguided young minds have been susceptible to the paths of anti-social conduct since the very inception of social living. But although this problem is not a new one, it seems to be appearing in a new focus. The increasing mechanization of society has offered hitherto unknown opportunities for crime. While this has been a constantly present problem with adult criminals subject only to such periodic fluctuations in rate of incidence as that of the Prohibition era, a merely casual reading of newspapers and periodicals will demonstrate that the incidence of crime committed by juveniles has apparently been on the upswing since World War II. At least attention devoted to this type of crime in the mass news media has noticeably increased in the last two decades. The reasons for this apparent increase in juvenile crime are not undisputed. It may be that during the wartime period of prosperity when many parents were away from home for long periods,

¹ OHIO REV. CODE §2903.10.

² Lockhart and McClure, *Obscenity in The Courts*, 20 L. AND CONTEMP. PROB. 596, 601 (1955).

³ WERTHAM, *THE SEDUCTION OF THE INNOCENT*, p. 284, RHINEHART & Co., NEW YORK, 1953.

⁴ HOMER, *ILIAD*, Book III, Line 4; Translation of Alexander Pope.

either in the armed services or in war plants, the youth of the community was less supervised and restricted in their activities and hence was allowed to develop, unfettered, any proclivities for crime and delinquency. It may be also that the relatively new professional groups of social welfare workers and juvenile center directors, together with representatives of the ever-broadening press and communication facilities, are merely placing new stress on an age-old problem and thereby increasing the nation's awareness of the juvenile transgressor.

Whatever may be the cause of national concern over juvenile delinquency, it is universally agreed that such a problem does exist and that it presents a real threat to the maintenance and improvement of the social order. In fact, this problem is not exclusively a local or national one. Countries all over the world are faced with similar dangerous conditions. Juvenile delinquency developed in Europe after the war to an alarming degree. Such relatively stable nations as Canada, Australia and New Zealand also have felt the seriousness of the situation. Even the press of the Soviet Union has described the existence of "hooliganism" among Soviet youth of the post-war period. It is interesting thus to observe that all states, even when organized on very different theories of governmental responsibility, are forced to meet very similar problems. Our own legislatures may gain beneficial insights by comparing our attempted solutions with those proposed abroad.

COMIC BOOKS AS A DELINQUENCY FACTOR

While the causes of juvenile delinquency are unquestionably many, varied and complexly interrelated, there seems to be little scientific agreement on what constitutes the chief causes and the most effective means of eliminating them. The role of the crime comic book as a contributing factor in increased juvenile delinquency is hotly disputed among the experts. Psychiatrists, child development specialists and welfare workers are unable to agree on the importance of literature of any type on a child's social development. Even less agreement is found concerning the theory that children's reading of crime and horror comics has a direct contributing effect on anti-social juvenile behavior.

A leading exponent of the anti-comic book crusade is Dr. Frederic Wertham, a New York City psychiatrist. In his book, *Seduction of The Innocent*, Dr. Wertham contends there is a definite and close correlation between comic books and increased juvenile delinquency.⁵

The most subtle and pervading effect of crime comics on children can be summarized in a single phrase: moral disarmament. . . . The more subtle this influence is, the more detrimental it may be. It is an influence on character, on attitude, on the higher functions of social responsibility, on super-ego formation and on the intuitive feeling for right and wrong.

⁵ *Supra* note 3.

To put it more concretely, it consists chiefly in a blunting of the finer feelings of conscience, of mercy, of sympathy for other people's suffering and of respect for women as women and not merely as sex objects to be bandied around as luxury prizes or fought over.⁶

Children seek a figure to emulate and follow. Crime comic books undermine this necessary ingredient of ethical development. They play up the good times had by those who do the wrong thing . . . They not only suggest the satisfaction of primitive impulses but supply the rationalization. In this soil children indulge in the stock fantasies supplied by the industry: murder, torture, burglary, threats, arson and rape. Into that area of the child's mind where right and wrong is evaluated, children incorporate such fake standards that an ethical confusion results for which they are not to blame. They become emotionally handicapped and culturally underprivileged. And this effects their social balance.⁷

Wertham answers those parents who say their children are immune from harm because they do not read comic books by asking:

Don't you think your child will later on, either in school or in other places, meet other children who have been steeped in comics and have absorbed their attitudes concerning sex, violence, women, money, races and other subjects that make up social life?⁸

F.B.I. Director J. Edgar Hoover has echoed Dr. Wertham's fears:

Crime books, comics and other stories packed with criminal activity and presented in such a way as to glorify crime and the criminal may be dangerous, particularly in the hands of an unstable child.⁹

Dr. Benjamin Karpman, another eminent psychiatrist, stated before a Senate committee investigating juvenile delinquency:

. . . [F]or instance you take a young boy who is reaching adolescence, and he is hungry for information on sex, but for some reason or other doesn't get it at home because the mother and father are too tired to talk to [him] about four letter words and other nasty things. Where is the boy to find it? He cannot find it at home. He doesn't always find it in school. Very few schools have developed to the point of giving lectures on the subjects of the facts of life. He looks for it in the gutter, and there he comes across pornographic material and literature, and that draws him into all sorts of gang life, which later discharges itself as juvenile delinquency.

⁶ *Ibid.* pp. 90-91.

⁷ *Ibid.* pp. 94-95.

⁸ *Ibid.* p. 108.

⁹ U. S. Senate Special Committee to Investigate Organized Crime in Interstate Commerce, *Juvenile Delinquency*, (81:2, 1950) p. 6.

. . . There is a direct relationship between juvenile delinquency, sex life, and pornographic literature.¹⁰

But expert opinion is not in agreement on this subject. Sheldon and Eleanor Glueck, leading specialists in the field of juvenile misbehavior, in 1950 published the results of ten years of research into the causes of juvenile delinquency.¹¹ In the 399 pages of this volume of intensive research, the subject of comic books is not even cursorily introduced. This glaring omission would tend to indicate these experts believe there is no correlation at all between crime comic books and delinquency.¹² In fact it is reported that scientific studies have shown that those youths who do get into trouble are less inclined to read literature of any type than are normal, non-delinquent children.¹³

Expert opinion expressly contradicting Wertham's thesis is not lacking. Dr. F. M. Thrasher, New York University Professor of Education, reported to a Senate committee that:

. . . [N]o acceptable evidence has been produced by Wertham or anyone else for the conclusion that the reading of comic magazines has or has not a significant relation to delinquent behavior. . . . The danger inherent in the present controversy is that having set up a satisfactory "whipping boy" in comic magazines, we fail to face and accept our responsibility as parents and as citizens for providing our children with more healthful family and community living. . . .¹⁴

Dr. Wandell Sherman of the University of Chicago has stated:

I have never seen one instance of a child whose behavior disturbance originated in the reading of comic books, nor even a case of a delinquent whose behavior was exaggerated by such reading. A child may ascribe his behavior to a comic he has read or a movie he has seen. But such explanation cannot be considered scientific evidence of causation.¹⁵

Edwin J. Lucas, director of the Society for the Prevention of Crime, has stated:

I am unaware of the existence of any scientifically established causal relationship between the reading of comic books and delinquency. It is my feeling that efforts to link the two are an extension of the archaic impulse by which, through the ages, witchcraft, evil spirits and other superstitious beliefs have in turn been blamed for anti-social behavior.¹⁶

¹⁰ U. S. Senate Subcommittee to Investigate Juvenile Delinquency, *Juvenile Delinquency*, (84:2, 1956) pp. 12-13.

¹¹ GLUECK, SHELDON AND ELEANOR, *UNRAVELLING JUVENILE DELINQUENCY*, The Commonwealth Fund, New York, 1950.

¹² *Supra* note 2.

¹³ *Id.*

¹⁴ U. S. Senate Special Committee to Investigate Organized Crime in Interstate Commerce, *Juvenile Delinquency* (81:2, 1950) p. 156.

¹⁵ Quoted in Feder, *Comic Book Regulation*, 1955 LEGISLATIVE PROBLEMS NO. 2, University of California, p. 7.

¹⁶ *Ibid.* at p. 8.

Behind the conflicting opinions of those who have become experts in this field lies the undisputed fact that there is very little scientific information concerning the relationship between crime-sex literature and aberrational human conduct.¹⁷ An interesting facet of this was demonstrated, however, in the Kinsey reports, where it was found that only 16% of the women and 21% of the men tested experienced a "definite" or "frequent" erotic response to sex literature.¹⁸ This may tend to indicate that obscenity or crime-glorifying alone will not necessarily lead to sex or other offenses if the readers are normally well-balanced.

Despite this paucity of scientifically documented studies of the causal relationship between crime-sex comic books and actual juvenile delinquency, the U.S. Senate Subcommittee to Investigate Juvenile Delinquency was able to conclude through Richard Clendenon, its executive director:

. . . [I]t is eminently accurate and fair to say that there is substantial, although not always unanimous, agreement on the following three points:

1. That the reading of a crime comic will not cause a well adjusted and well socialized boy or girl to go out and commit crime.
2. There may be a detrimental and delinquency producing effect upon some emotionally disturbed children who may gain suggestion, support, and sanction for acting out his own hostile and aggressive feeling.
3. There is reason to believe that as among youngsters, the most avid and extensive consumers of comics are the very boys and girls less able to tolerate this type of material. As a matter of fact, many experts feel that excessive reading of materials of this kind in itself is symptomatic of some emotional maladjustment in a youngster.¹⁹

That the executive director of a Senate subcommittee would come to such conclusions on comic books reflected the growing revulsion of the public conscience against such publications. To curb the prolific reproduction and dissemination of this type of literature and to prevent what was felt to be its detrimental effects on youth, various measures were taken. These measures fall into three categories: reform within the industry, anti-comics crusades by private groups, and legislative programs to ban or punish the sale of such comic books.

SELF-IMPOSED REGULATION: CODE OF ETHICS

The comic book industry does an amazingly large business, publishing up to 90 million copies a week which brings in returns of around

¹⁷ Lockhart, William B. and McClure, Robert C., *Literature—The Law of Obscenity, and The Constitution*, 38 MINN. L. REV. 295, 385 (1954).

¹⁸ KINSEY, POMEROY, MARTIN AND GEBHARD, *SEXUAL BEHAVIOR IN THE HUMAN FEMALE*. 669-670 (1953). See Lockhart, 38 MINN. L. REV. 295, 385, Note 525.

¹⁹ U. S. Congress. Senate. Subcommittee to Investigate Juvenile Delinquency, *Juvenile Delinquency*, Hearings of April 21, 22, June 4, 1954 (83:2, 1954) p. 53.

\$350,000,000 a year.²⁰ With such financial interests involved, the industry was necessarily cognizant of the mounting public disapproval of many comic book publications and the threat to the future of the industry contained in this disapproval. In 1948, industry representatives organized the Association of Comic Magazine Publishers. A basic ethical code was established and an attempt made to persuade publishers who belonged to the association to conform to these standards. No penalty for non-compliance was ever agreed upon and the code did not prove effective. This organization, never very strong, soon became the victim of competition from non-member publishers and by 1954 only three publishers remained members of the group.²¹

The next attempt at self-regulation by the industry took the form of the Comics Magazine Association of America. In September, 1954, New York City Magistrate Charles F. Murphy was appointed "czar" of the Association to administer and enforce a stringent, detailed code of ethics containing thirty-one specific prohibitions barring sex perversions and over-emphasis on crime-glorification and other abnormalities.²² Advertising in comic books was limited to articles considered non-detrimental to children. All comic issues had to be referred to and approved by "Czar" Murphy before publication, and only after approval could the issue be published. Each publication was to be stamped with a seal of approval and the penalty for non-compliance was dismissal from the Association and public announcement of the action. This Association is still in existence and its code is being enforced with reasonable success. But not all comic book publishers joined the Association. Dell, which is the largest publisher in the industry, did not join.²³ Moreover, even the tangible results of the Association's code administration did not completely eradicate the evil. In 1956 a New York legislative committee still concluded in its study of objectionable and obscene materials:

That there has now been a marked improvement in the quality of comic books supervised by the Code Authority of the Comics Magazine Association of America, Inc.; that some publishers failing to subscribe to the Comics Authority Code continue to disseminate comic books portraying horror, terror and methods of crime; that an undesirable emphasis on violence remains; that one principal publisher has withdrawn from Code supervision and has initiated a series of "Picto Fiction" publications of a highly objectionable nature and that there remains a continuing need for the Code Authority and for close public and legislative scrutiny of the comic book industry.²⁴

²⁰ Deland, Paul L., *Battling Crime Comics To Protect Youth*, 19 FEDERAL PROBATION 26, (Sept. 1955).

²¹ *Supra* note 19.

²² Murphy, Charles F., *A Seal of Approval For Comic Books*, 19 FEDERAL PROBATION 19-20, June 1955.

²³ *Supra* note 15, p. 16.

²⁴ Joint Legislative Committee Studying the Publication and Dissemination of

PRIVATE CENSORSHIP

When self-regulation of the industry, especially before organization of the Comics Magazine Association of America, failed to satisfy the public's demand for a clean-up of publications designed for children, many civic and private groups took up the challenge. Various veterans, womens and fraternal organizations campaigned on a local level to boycott or ban objectionable crime comics.²⁵ Civic groups have also made attempts at controlling comic book dissemination. An example of this is Chicago's Citizens Committee for Better Juvenile Literature.²⁶ The leader of that group described the Committee's goal as follows:

Wertham [Dr. Frederic Wertham] says abolish all comic books. We don't say this. We don't want to force anyone out of business. We want to educate and show people what poor stuff is available so that they will demand better magazines and comics.²⁷

This Committee is closely connected with the National Organization for Decent Literature (NODL), sponsored by the Catholic Church.²⁸ The methods of the Chicago Committee and those of the nationwide NODL are similar. Aside from urging stronger obscenity legislation, NODL and its offshoots investigate newsstand offerings, prepare lists of publications deemed objectionable by the group and then apply varying pressures on the newsstand operators to remove the black-listed publications.²⁹ These pressures range from verbal persuasion to general boycott.³⁰ It is not infrequent that these citizen vigilante committees enlist the aid of local law-enforcement officials to exert informal pressure against the distributors.³¹ Such measures have resulted in effective censorship of some publications which are accepted by the general public and the courts as non-objectionable.³² While the effect thus achieved of eliminating popularly objectionable but non-obscene literature from the newsstands may please the local populace, or at least the civic-minded parent groups within it, it creates at the same time other problems which may have inherent dangers even more serious than those of comic books. If such methods as these become wide-spread, children may learn by example that self-action is preferable to governmental action in achieving a desired end. The incentive thus afforded mob-power and rule by men instead of rule by law may bring about results

Objectionable and Obscene Materials, Conclusion (Leg. Doc. No. 32, 1956), New York State Legislative Annual 1956 p. 43.

²⁵ *Supra* note 15, pp. 11-14.

²⁶ Twomey, *The Citizen's Committee and Comic Book Control: A Study of Extragovernmental Restraint*, 20 LAW AND CONTEMP. PROB. 621 (1955).

²⁷ *Ibid.* p. 626.

²⁸ *Ibid.* p. 625.

²⁹ *Supra* note 17, p. 304-305.

³⁰ *Ibid.* 309-310.

³¹ *Ibid.* 311. See also Twomey, *supra* note 26 at 628.

³² *Supra* note 17, pp. 317-318.

opposite to those originally desired by the private censors. Not only would the strength of our governmental institutions be undermined but the concept of due process of law would be destroyed. It would seem then that even here the means do not justify the ends.

Censorship by private groups cannot be considered a part of the democratic traditions of American society. Fortunately, the suppression of indecent and patently objectionable literature designed for young readers has not been left only to such extra-legal influences as those exerted by NODL and similar vigilante groups. The lawmakers have responded to the problem as well.

COMIC BOOKS AND THE LEGISLATURE

The nation's legislatures, being ever sensitive to the will of the body politic, have not overlooked public sentiment against crime and sex comic books. There are federal statutes prohibiting the transportation in interstate commerce of obscene materials, the use of the mails for distribution of obscenity and the import or export of such materials into or out of the country.³³

Every state in the union has some form of obscenity prohibition statute except New Mexico which specifically authorizes municipalities to ban such materials.³⁴ Some of these statutes are sufficiently flexible to cover crime and horror comics which might not be technically obscene but which might be detrimental to the state's youth. An example of this is found in the Massachusetts statute which prohibits the sale, distribution or publishing with intent to sell to any person under the age of eighteen any material which is obscene or "manifestly tending to corrupt the morals of youth."³⁵ In other states it was deemed necessary to enact a special statute aimed at comic books and other spurious publications, such as paper-backed "pocket books" and "girlie magazines" which might not come within the obscenity test but might nevertheless pose a threat to the social attitudes of youthful readers. Fourteen states have such laws in effect.³⁶ These laws are basically similar with only minor variations. The Ohio statute is typical in many respects.³⁷ It prohibits the sale or giving away to

... a minor under the age of eighteen, printed or reproduced material in a newspaper, magazine, or in cartoon form commercially known as a "comic book" or "comic magazine":

(A) Depicting any unlawful act of murder, killing, shooting, cutting, stabbing or maiming of a person or any act of robbery, burglary, rape, seduction, incest, sodomy, prostitu-

³³ 18 U.S.C. §§1461-1463.

³⁴ 3 NEW MEXICO STATUTES 1953, §14-21-12.

³⁵ ANN. LAWS OF MASS., chap. 272, §28 (1956).

³⁶ California, Connecticut, Kentucky, Maryland, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia and Washington.

³⁷ OHIO REV. CODE §2903.10 (1953).

tion, pandering, kidnapping, arson, forgery, counterfeiting, treason, or use of narcotics;

(B) Depicting acts of unusual cruelty, mass or extreme brutality, or acts which are obscene;

(C) Advocating acts involving moral turpitude; or

(D) Which is provocative of corrupt morals, crime, or juvenile delinquency.

Possession is held to be *prima facie* evidence of knowledge. Only biblical and historical portrayals are excepted from the ban. Penalties of one thousand dollars fine or six months imprisonment or both are added.³⁸

The statutes of some other states include such aids to the courts as requiring reasonable inspection of the contents of periodicals by newsstand operators and the statutory rule that possession of such articles is *prima facie* evidence of intent to sell.³⁹ Another aspect of these statutes is a prohibition against tie-in sales, a device commonly used by magazine distributors to force dealers to accept for sale objectionable literature in order to obtain proper, non-objectionable magazines and periodicals.⁴⁰ These tie-in sales had long handicapped newsstand operators whose honest desires to clean up their newsstands were frustrated by less scrupulous periodical distributors. Ohio's statute is again typical of most of those tie-in sales prohibitions:

No person shall as a condition to a sale or delivery for resale of any goods, wares, paper, newspaper, magazine, periodical, or publication, require that the purchaser or consignee accept for resale any other article, book, or other publication reasonably believed by the purchaser or consignee:

(A) To be obscene; or

(B) Which if sold to a minor under the age of eighteen would be in violation of [the crime comic book prohibition statute].⁴¹

The history of a typical legislative response to comic book agitation may be found in the amply documented legislative history of New York. A joint legislative committee was created in 1949 to study the need for regulatory comic book legislation.⁴² Annual reports followed at first recommending industry self-regulation and later proposing legislative action. Legislation was passed in 1952 but was vetoed by the New York Governor on grounds of unconstitutionality,⁴³ as violating the

³⁸ *Id.*

³⁹ CONN. GEN. STATUTES, §3293d, (1955 Supplement).

⁴⁰ The following states have such a statute: California, Connecticut, Illinois, Kentucky, Maryland, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia and Washington.

⁴¹ OHIO REV. CODE §2905.341 (1953).

⁴² Joint Legislative Committee to Study the Publication of Comics, Condensed Report (Leg. Doc. No. 37, 1954), New York State Legislative Annual, 1955. pp. 25-35.

⁴³ Governor's Veto Message. New York State Legislative Annual, 1952 p. 419.

doctrine enunciated by the United States Supreme Court in the *Winters* case, discussed later in detail.⁴⁴ 1953 proposed legislation failed of passage, but in 1954 three bills were enacted which considerably strengthened existing obscenity statutes and gave city attorneys specific authority to bring injunctions against the sale of such periodicals. A committee is still functioning in New York but has now broadened its scope to include other forms of communication.⁴⁵

One other form of comic book control has been attempted by state action. In 1953 the Georgia legislature created a State Literature Commission. The duty of the Commission was to hold hearings on possibly objectionable publications, banning those found to be obscene. The early statement by the Commission chairman, "I don't discriminate between nude women whether or not they are art. It's all lustful to me . . .," cast some doubt on the reasonable and objective application of the censorship program within the confines of constitutionality.⁴⁶ Later indications were, however, that the Commission was proceeding judiciously and circumspectly with fair and reasonable standards.⁴⁷

As an indication of the importance of state legislation in the field of comic book control, The Council of State Governments in its *Suggested State Legislation Program for 1957* included a model statute regulating crime and sex comics, although also attaching the caveat that effective industry self-regulation was preferable to legislative action.⁴⁸

COMIC BOOKS AND THE COURTS

Despite the attention given to the problem of crime and horror comic books by citizen groups and the legislatures of Ohio and other states, there have been relatively few instances of litigation over comics and their prohibition. The legal problems which have arisen in this general field of literary censorship are concerned with two main though overlapping problems: the narrowing coverage of obscenity statutes and the difficulties presented by attempts to ban or punish publication and sale of material not technically obscene but which is, nevertheless, deemed harmful to youths.

The first of these two problems arose when American jurists began to refute the old common law test for obscenity. That test was first enunciated in the landmark case of *Regina v. Hicklin*,⁴⁹ in which Lord Chief Justice Cockburn said:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those

⁴⁴ *Winters v. New York*, 333 U. S. 507 (1948).

⁴⁵ *Supra* note 24.

⁴⁶ *Supra* note 17, pp. 312-313.

⁴⁷ *Id.*

⁴⁸ *Suggested State Legislative Program for 1957*, Council of State Governments, 1957, pp. 105-7.

⁴⁹ *Regina v. Hicklin*, L.R. 3 Q.B. 360 (1868).

whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.⁵⁰

This test applied not only to the whole of any work but also to any particular passage which the court might consider obscene, regardless of the literary merit of the work as a whole. The *Hicklin* test became deeply imbedded in the law of obscenity in the United States as well as in England.⁵¹ Only in 1933 were the American Courts able to begin the overthrow of this outmoded vestige of the Victorian era. In the *Ulysses* cases⁵² Judge Augustus N. Hand rejected the *Hicklin*, or partial obscenity test, and adopted a new test which considered among other things the literary merit of the book, the judgment of history if it were a classic and the effect of the book as a whole on those most likely to read it. "... [W]e believe the proper test of whether a book is obscene is its dominant effect."⁵³ Although the *Hicklin* test is probably still followed in the majority of American jurisdictions, the "federal" or "modern" rule has been adopted by a number of states.⁵⁴ Ohio has rejected the *Hicklin* test and adopted the more modern test in *State v. Lerner*, a Common Pleas decision which was not appealed.⁵⁵ In that case a statute incorporating the "obscene-in-part" test was held unconstitutional as violative of reasonable freedom of the press. Although this modern test of obscenity unquestionably narrows the coverage of general obscenity statutes and would allow the sale of some publications which would have been banned under the *Hicklin* test, it does not pose any particular impediment to the enforcement of statutes against comics and other cheap literature of a similar vein. The lack of any literary merit and the fact that the obscenity usually contained in such publications is not an essential part of the story indicates that obscene comics could meet neither the standards of the modern test nor those of the *Hicklin* case.

The second problem confronting anti-comic book statutes presents a more serious difficulty. Much of the material objected to as providing a meretricious influence on youths is not actually obscene under either the *Hicklin* or the modern tests. These publications may be of the types which glorify crime and admiringly portray vicious criminals in a sympathetic light. Such literature might also emphasize and thus give tacit approval to brutality, violence, sadism, immorality and racial antagonism. Most of this is not obscene and, consequently, would not come within the purview of general obscenity statutes.

To solve this problem legislatures drafted statutes to cover crime

⁵⁰ *Ibid.* at 371.

⁵¹ *Supra* note 17 at 326-7.

⁵² *United States v. One Book Called "Ulysses,"* 5 F. Supp. 182 (S.D. N.Y. 1933), *aff'd* 72 F. 2d 705 (2d Cir. 1934).

⁵³ *Ibid.* at 707.

⁵⁴ *Supra* note 15, p. 20.

⁵⁵ 51 Ohio L. Abs. 321, 81 N. E. 2d 282 (1948); see 1955 Wisc. L. Rev. 496-7, for criticism of the Ohio decision as overly liberal.

and horror comics specifically. These statutes, in the few times they have been before the courts, have not been favorably received. The leading case in this field was decided by the Supreme Court of the United States in *Winters v. New York*.⁵⁶ In that case the Court held unconstitutional a New York statute which prohibited the publication or sale of

. . . any book, pamphlet, magazine, newspaper or other printed matter devoted to the publication and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime.⁵⁷

This case was predicated upon two grounds of unconstitutionality. The statute was held void for vagueness as the legislative standards failed to give the offender fair notice of what acts were prohibited. The Court also indicated that the First Amendment protected most criminal and police case reporting, except possibly when they became so "amassed" as to actually incite the commission of crimes. The Court held that under that statute no dealer could tell when he had passed the line of "amassment" by selling such periodicals, thus depriving the offender of an absolute statutory standard for his crime.

The model statute suggested recently by the Council of State Governments has attempted to satisfy the requirements imposed by the *Winters* case by expressly excluding factual and newspaper type accounts of crime and police activity and attempting to set stricter standards by the use of more express language in the prohibition clauses.⁵⁸ That the Council's drafters were wise in attempting to obviate the result of the *Winters* case is seen by the fact that the anti-comics statutes of several states have language almost identical with that of the constitutionally objectionable New York statute. Indeed, Ohio Revised Code Section 2905.34 (not the statute enacted in 1955) still holds such activity to be illegal, using almost this same wording as the invalidated New York statute. Whether the newer Ohio statute has avoided this patent unconstitutionality is a serious and as yet undetermined issue which is discussed more fully in the conclusion of this paper.

This same problem arose in California when Los Angeles passed a prohibitory city ordinance in which an attempt to profit by the lesson of the *Winters* case was made.⁵⁹ But this ordinance was also held unconstitutional in a subsequent unreported decision as violative of the due process prohibition against vagueness and of the guarantee of the freedom of the press.⁶⁰

The *Winters* case and the invalidation of the Los Angeles' ordinance serve to emphasize the vitality of the historic abhorrence against

⁵⁶ *Supra* note 44.

⁵⁷ NEW YORK PENAL CODE §1141(2) (1941).

⁵⁸ *Supra* note 48.

⁵⁹ *Supra* note 15 at p. 22.

⁶⁰ *Id.* See WERTHAM, *supra* note 3 at pp. 302-5 for a discussion of this case.

censorship which has always characterized enlightened American society. But when this abhorrence of censorship runs counter to the strongly felt desires of many competent and honest people who see in such juvenile literature as horror, crime and sex comics a real threat to the moral structure of future society, there is created a conflict of interest for which there is no facile, simple solution. One resource which must not be overlooked in the necessary search for such a solution, however, is the experience of others who have encountered the same problems.

COMIC BOOKS ABROAD

The spread of crime comics and similar literature throughout the world has evoked extremely critical comment from the foreign press and governmental bodies.⁶¹ These magazines are decried as representative of modern American culture, since most of these publications are either imported from the United States or printed from American matrices.⁶² Like Ohio and the other states of the Union mentioned above, many countries have been shocked by these comic magazines into taking active measures to combat their dissemination. This foreign legislation treated legal issues similar to those raised by our own statutes.

In England where a love of liberty similar to our own has always caused organized literary censorship to be looked on with distaste, comics presented a problem. Post-World War II public opinion began to mount against imported American comics and their domestic counterparts, as the public considered them contributive factors in a rising juvenile delinquency rate.⁶³ Yet the objections to strict censorship remained. During this period the English common law of obscenity, in the interpretation of the Obscene Publications Act of 1857, underwent some change. The old case of *Regina v. Hicklin* had never been overruled, but it was modified somewhat in application. Although English courts are still capable of arriving by use of the *Hicklin* test at such absurd results as the banning of an entire book because of its lurid cover,⁶⁴ recent cases such as *Regina v. Martin Secker & Warburg, Ltd.* indicate that the English viewpoint is coming closer to the "federal" or "modern" test of some American courts.⁶⁵ The use by the court in the *Warburg* case of the standard of an "average, decent, well-meaning man or woman" in determining what is obscene (as opposed to the more exacting *Hicklin* test of any person "into whose hands a publication of this sort might fall") appears to be very close to the standard of *l'homme moyen sensuel* used by Judge

⁶¹ U.S. Congress. House. Select Committee on Current Pornographic Materials, Report (82:2, Dec. 31, 1952), pp. 30-2.

⁶² See Feder, *supra* note 15, pp. 9-10.

⁶³ See WERTHAM, *supra* note 3, pp. 274-94.

⁶⁴ Paget Publications, Ltd. v. Watson, 1 All E. R. 1256 (1952).

⁶⁵ 1 Weekly L.R. 1138 (1954); See also Williams, J.E.H., *Obscenity in Modern English Law*, 20 L. AND CONTEMP. PROB. 630 (1955); 218 LAW TIMES 170 (1954).

Woolsey in the first *Ulysses* case and approved by Augustus Hand in the second.⁶⁶ It may be seen by this development in the English law of obscenity that the coverage provided by the law has been somewhat narrowed in its application and that, therefore, it is conceivable that some comic book literature might evade prohibition under the test of the *Warburg* case. This, coupled with the fact that many crime and horror comics would not be considered actually obscene presents the English people with the same two problems which had confronted the American public.

The British response to this situation was the enactment in mid-1955 of the "Horror Comics" Act.⁶⁷ This act made it an offense to print, publish or sell any book, magazine or other work

... which is of a kind likely to fall into the hands of children and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying—

(a) the commission of crimes; or

(b) acts of violence or cruelty; or

(c) incidents of a repulsive or horrible nature; in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.⁶⁸

The act provides for criminal penalties.

This statute is an important step in attempting to control typically juvenile literature and can be seen to be closely analogous to the statutes of Ohio and other American jurisdictions which have enacted comic book laws. From an American constitutional viewpoint it is even an improvement on many of our statutes, as the prohibition against crime reporting is tempered by the necessity of a tendency to corrupt youth, thus probably avoiding the *Winters* case objections. But this statute also appears to incorporate the *Hicklin* test, a fact recognized by its English opponents and which would probably be objectionable to American courts which have followed the modern rule.⁶⁹

Although the "Horror Comics" Act is a definite contribution to the solution of England's juvenile literature problem, public opinion also has had an effect. On November 2, 1954, Britain's chief comic publisher, Arthur Miller, announced he was going to cease publishing comic books.⁷⁰ His comment, "This means there will be no more of them in this country. The game is no longer 'worth the candle,'" ⁷¹ did not, however, deter Parliament from legislative to insure their elimination.

The problems created by crime and horror comics arose in other parts of the British Commonwealth as well as in England. In Canada,

⁶⁶ 118 JUSTICE OF THE PEACE 700 (1954).

⁶⁷ 3 & 4 Eliz. II, c. 28 (1955).

⁶⁸ 35 HALSBURY'S STATUTES OF ENGLAND, 2d. Ed. 45 (1955 Supp.).

⁶⁹ See Williams, *supra* note 65 at 643.

⁷⁰ See Feder, *supra* note 15 at 9-10.

⁷¹ *Ibid.*

anti-comic book agitation developed after several gruesome crimes had been committed by juveniles who alleged comic book inspiration for the acts.⁷² Parent-teacher councils and civic groups began to urge action by the Dominion Parliament. This agitation was met by opposition from comics publishers (most of whom were from the United States) and the Canadian National Committee for Mental Hygiene which sided with those critics of comic book legislation who believe there is no causal connection between such literature and delinquent acts.⁷³ Despite this opposition to legislative action, the Canadian Parliament enacted a statute imposing criminal penalties for publication or sale of crime comics.⁷⁴ Crime comics were defined as

. . . a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially:

- (a) the commissions of crimes, real or fictitious, or
- (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

Whether it was by effect of this statute or by force of public opinion, Canada obtained results. Comics publishers and distributors decided to remove most comic books from Canadian newsstands.⁷⁵ Despite these improvements, however, the statute enacted by Canada as part of its criminal code has serious defects from the point of view of the United States constitutional system. In the light of the *Winters* case, the stringent prohibition against portrayal of crime and events surrounding such crime would probably be void. It is to be noted, however, that at least one state legislature in the United States closely observed the Canadian Parliament's debates and presumably profited by them.⁷⁶

In other parts of the British Commonwealth the comic book menace was felt and legislative steps were taken to counter it. In Australia the legislative period 1953-1955 saw marked changes within the federal system in the previously existing obscenity legislation.⁷⁷ New state enactments were marked by a broadening of scope in the definition of obscenity and in at least two states the institution of an administrative censorship board. The first aspect, the broadening of the definition of obscenity, was accomplished in part by the codification of the common law rule against obscenity, thus enabling the courts or boards to use the excitability of a moron or sexual pervert for the applicable standard of

⁷² See WERTHAM, *supra* note 3 at 274-6.

⁷³ For an account of the Canadian anti-comics agitation and eventual legislative action see WERTHAM, *supra* note 3 at 274-95.

⁷⁴ 2-3 Eliz. II, c. 51, §150 (1953-1954).

⁷⁵ See WERTHAM, *supra* note 3 at 283.

⁷⁶ Report of the New York State Joint Legislative Committee To Study The Prohibition of Comics. 1952. Leg. Doc., No. 64.

⁷⁷ This account of Australian legislation is taken from a comment by Iliffe in 2 SIDNEY L. REV. 134 (1956).

obscurity.⁷⁸ Another factor in increasing the coverage of these acts was the inclusion of the nebulous word "objectionable" as a characteristic of literature which could be banned.⁷⁹

The second feature of the Australian legislation was the establishment of censorship boards by Queensland and Tasmania. These statutes take away from the courts the duty of serving as *custos morum* and place it in a Literature Board of Review (called Publications Board of Review in Tasmania), composed of a panel of citizens appointed by the Governor. The task of this Board as provided in the Queensland statute is to "examine and review literature with the object of preventing the distribution in Queensland of literature which, or any part of which, is objectionable."⁸⁰ "Public news, intelligence, or occurrences or political or religious matter" are exempted.⁸¹

Objections have been made to this codification of the common law rule (*Hicklin* test) against obscenity and to the censorship boards of literature review.⁸² The latter feature is roughly analogous to the State Literature Commission of Georgia which has both adherents and critics in America.⁸³ The Australians applied both of these features of their obscenity statutes directly to comic books by including in the definitions of materials covered those which are primarily composed of illustrations.

The problem confronting Australia's neighbor, New Zealand, was quite similar and the Parliament of New Zealand responded in a like manner. In a 1954 amendment to the Indecent Publications Act of 1910, Parliament not only increased the prohibitions of that act to include those "which unduly emphasizes matters of sex, horror, crime, cruelty or violence,"⁸⁴ but also limited the "indecent" concept by what a court finds to have "an immoral or mischievous tendency."⁸⁵ Each distributor of printed matter was required to register with the Secretary of Justice and to mark every separate publication sold by him with his name and address.⁸⁶ The penalty for any infringement of the primary prohibitions of the Act was the suspension or cancellation of the distributor's registration, without which he could not do business. New Zealand's answer to the problem appears to be a direct control on the right to do business as a distributor and this coupled with the somewhat unwieldy definition of distributor have been subject to criticism in that

⁷⁸ See 27 AUSTRALIA L. J. 457 (1953).

⁷⁹ See e.g. Objectionable Literature Act of 1954 (Queensland) 3 ELIZ. II, No. 2.

⁸⁰ Quoted from Iliffe, *supra* note 77 at 135.

⁸¹ *Ibid.*

⁸² *Supra* note 78 at 458.

⁸³ Deland, *Battling Crime Comics To Protect Youth*, 19 FEDERAL PROBATION 26 (1955); See also Lockhart, *supra* note 17 at 312-13.

⁸⁴ II NEW ZEALAND STATUTES 1954 p. 1171.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

country.⁸⁷ It is doubtful that this regulation on the right to do business would be acceptable in the United States and yet it is not unlike our liquor control statute, a violation of which may lose for the licensee his "right" to engage in the liquor-selling business.⁸⁸ It is also worth noting that New Zealand did not follow the example of Queensland and Tasmania in establishing an official censorship board.

English-speaking countries are not the only nations exposed to the plague of crime-horror-sex comic books. On the continent of Europe the importation and also the translation and republication of American or American style comics has had serious repercussions.

In France the post-World War II influx of American comic books came on a wave of pro-American sentiment which resulted in the emulation of the bad as well as the good in American life. A series of comic-inspired juvenile crimes united the opinion of the public with that of psychologists, authors and civic leaders against comic books.⁸⁹ The result was the enactment by the National Assembly of legislation stringently restricting the publication of juvenile literature. These measures applied, in the words of the statute, to "all publications, periodicals or not, which by their character, their presentation or their subject matter appear to be principally directed toward children or adolescents."⁹⁰ Only official publications were exempted. These "children-directed" publications were forbidden to include:

. . . any illustration, any story, any news, any headline, any insertion showing in a favorable light gangsterism, falsehood, stealing, idleness, cowardice, hatred, debauchery or any acts describing crimes or delinquency or of a nature to demoralize children or youth or to inspire or support racial prejudice.⁹¹

The punishment provided was imprisonment up to one year and a fine of up to one million francs for a first offense.⁹² In addition to the outright prohibition there was established in the Ministry of Justice a commission for the surveillance and control of these publications. Before publication of such literature the editors must submit to the commission the titles of the publications and lists of the names and addresses of the directors of the publishing company. The editors or directors are also required to submit to the commission five samples of each edition, so that the commission may decide whether they offend the statutory standard. This same law prohibits all import and export of prohibited ma-

⁸⁷ Campbell, I. D., *The Indecent Publications Amendment Act, 1954. A Commentary*, 30 NEW ZEALAND L. J. 293 (1954).

⁸⁸ OHIO REV. CODE §4303.37 (1953).

⁸⁹ For a comment on French public opinion see WERTHAM, *supra* note 3 at 289-90.

⁹⁰ Dalloz, Code Penal, Appendice, *Lois du Juillet 1949, Sur les publications destinees a la jeunesse*, p. 644, Paris, 1957.

⁹¹ *Ibid.*

⁹² *Id.* at 646.

terials and provides for the liability of directors, editors, authors and distributors.⁹³ The French made this law also applicable to all their overseas colonies.

This law was enacted by a nation which strongly believes in the freedom of the press,⁹⁴ and, moreover, by complete agreement on this by all parties of French politics emphasizes the seriousness with which the French approached the problem.⁹⁵ Although some parts of this law might be repugnant to our somewhat different concepts of freedom-versus-censorship, France has taken some of the same steps as have two Australian states and our own state of Georgia in combatting the dangers presented to youths by comic books.

In Germany, as well as France, the post-war influx of comic books was strongly felt. The American army brought with it what may have appeared to Germans as America's comic book culture. But comics did not stop with the army; they were also spread by the comprehensive, American-led recovery programs for Western Germany.⁹⁶ American-style comics featuring gangsters, hoodlums, sex and violence under such typical names as "Tom Mix" spread rapidly throughout the Allied zones, much to the fear and disgust of responsible Germans.⁹⁷

The response to this growth of objectionable literature came soon after the establishment of the Bonn government. The German Bundestag enacted a "Law on the Dissemination of Publications Endangering Youth."⁹⁸ This act passed according to its preamble "for the protection of growing youths," applied directly to comic books:

- (1) Publications, which are capable of endangering youthful morality are to be placed in a register. In this are to be included all publications which extol crime, war and racial hatred. The inclusion in the register is to be made public.
- (2) A publication will not be placed in the register:
 1. only because of its political, social, religious or philosophical contents;
 2. whenever it promotes art or science, research or educational purposes;
 3. whenever it is in the public interest. . . .
- (3) Illustrations are publications in the meaning of this statute.⁹⁹

Section 3 of this statute provides:

A publication may not, as soon as its inclusion in the

⁹³ *Id.* at 647.

⁹⁴ Dalloz, Code Penal, Appendice, *Loi du 29 Juillet 1881, Sur la liberty de la presse* (O.P. 81, 4.65), p. 593, Paris, 1957.

⁹⁵ See WERTHAM, *supra* note 3 at 291.

⁹⁶ See WERTHAM, *supra* note 3 at 292.

⁹⁷ *Ibid.*

⁹⁸ Gesetz "über die Verbreitung jugendgefährdender Schriften," 27 BUNDES-GESETZBLATT 377, June 9, 1953.

⁹⁹ *Ibid.*

register is made public, be offered for sale or made accessible to youth under 18 years of age.¹⁰⁰

Section 6 provides:

(1) Publications, which obviously seriously endanger the morals of youths, are subject to the restrictions of Sections 3 to 5 [prohibitions on sales and advertising for publications included in the register], without being included in the register or without public notice being given.¹⁰¹

Article II of the German statute established a Federal Examining Board for the effectuation of the policy of the statute and, specifically, to supervise the register and the inclusion of publications in it.¹⁰² Among the twelve members of the Board three represented the German state governments, one each came from the worlds of art, literature, publishing companies, retail book dealers, youth clubs, youth welfare committees, the teaching profession and the religious communities. A chairman was to be appointed by the Minister of the Interior. Procedures were promulgated for the inclusion in the register of such literature as came under the ban of Section 1. Opportunity was afforded to publishers and book sellers to be heard by the Board. Inclusion in the register was to be required only by a two-thirds vote of the Board, but provision was made for temporary, emergency inclusion orders by the Board, without such a vote but for only one month's duration. Punishment for violation of the statute was by imprisonment up to one year and by a fine.¹⁰³

The primary point of controversy concerning this law seems to have been about Section 6, which provided for prohibition of sales, without Board decision or inclusion in the register, for all publications "obviously" and "seriously" detrimental to youths. In 1955 the German Federal Supreme Court held in an opinion construing Section 6:¹⁰⁴

- a) Whether picture-sequence books (so-called comic strips or stripes, comic-books) are capable of endangering the morals of youth, depends upon their actual pictorial or textual contents.
- b) The evident facts of the serious moral danger threatened by crime-comics cannot be negated by alleging that the amount of danger to youth arising from comics is not greater than the deleterious influences of other modern means of mass-entertainment (e.g. bad films) and that no lasting harmful effects need be feared from them, because they would be read only at a certain age and state of development.
- c) The criterion of "obviousness" is that the moral danger to youth threatened by a publication must be recognizable without particular difficulty by every intelligent person concerned with the upbringing and protection of youth.
- d) The magazine dealer has the duty to examine, for its moral

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Id.* at 378.

¹⁰³ *Id.* at 379.

¹⁰⁴ 34/35 Heft (S. 1249-1296) *Neue Juristische Wochenschrift* 1287 (1955).

harmlessness every magazine held by him for sale, as far as he can not otherwise presume it, because of the acknowledged reputation of the publisher or on the basis of other circumstances known to him.¹⁰⁵

This case involved three issues of the children's picture periodical "Tom Mix" and one of "El Bravo—The Red House," which had been held by the lower court to be not so "obviously" immoral as to come under the prohibition of Section 6. In holding these issues to be "obviously" detrimental to youthful morality, the Court explained wherein the danger lay:

A publication endangers youthful morality whenever its probable effect makes it difficult for young persons to absorb the fundamental concept of Western Christian civilization and of the social and moral values embodied in that civilization. . . . The young person may thus become exposed to the danger of moral degradation.¹⁰⁶

The Court went on to reject the contention sustained by the lower court that, as most comic books were read only at a certain youthful age, their effects would not be lasting on grown youths. The Court replied that the lower court had overlooked two points:

. . . [T]hat young people in those very years in which they most avidly read comic books run the danger of seeing in the phantasies of provocative pictures the reproduction of actual reality and, allowing themselves to be more greatly impressed than would adults; . . . and that these years are decisive for the personality development of a youth, because he is, in the age of today's early-developed sexual maturity, especially impressionable by the good as well as the bad influences accessible in ever-increasing quantities.¹⁰⁷

The Court continued by stressing the danger of encouraging by such literature adolescents' selection of the brutal strongman of comic book fiction as the juvenile life-model. This, the court believed, would leave permanent traces on the personality of the growing young person.

In order to prevent such bad influences on character development the Court outlined the duty of the book dealer in preventing literature of an "obviously" dangerous character from coming to his stand. The court stated that watchful booksellers and newsstand operators were the best means of making the law effective. These dealers, the court insisted, should "not just superficially skim through [the publication], but should look through it with the carefulness fitting the concern for protection of youths."¹⁰⁸

The decision of the German Court in this case and especially its construction of Section 6 of the statute evoked considerable comment

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Id.* at 1288.

¹⁰⁸ *Id.* at 1289.

from German legal writers. Dr. Berthold, a practicing attorney, commenting in the *Neue Juristische Wochenschrift*, reviewed some of the criticisms of the decision.¹⁰⁹

. . . A serious danger to youth is then obvious when a publication's character is evident by a fleeting perusal, e.g. through its title, provocative composition or illustration. Section 6 should not be employed, however, for borderline cases. . . . The explanation of the Court of what it understood a moral danger to youth to be (rejection of the Christian-Western philosophy) means but little for the practice. This definition is capable of a flexible construction. By an expanded interpretation it could even cover political publications of a certain party alignment as dangerous to youths.¹¹⁰

Dr. Berthold also pointed out that the case seems to require the bookseller to examine his product with the expertness of a child psychologist or juvenile expert, which would finally result in the bookseller acting as a political censor. The article concluded by stating:

. . . [U]nder no circumstances can the view be supported that "Tom Mix" books, which describe acts of violence and brutality, obviously and seriously are dangerous to youths, as the Court stated, and thereby bring Section 6 into application. It may be that many of these gangster books are dangerous to youths, but that they are obviously and even seriously dangerous, clearly contradicts the purposes of the law and the opinions previously expressed in the commentaries. If one may proceed against these rowdy-books with Section 6 which had been believed to be designed only for special circumstances, then there is no more need at all for the whole, costly apparatus of the Federal Examining Board.¹¹¹

The German experience may be particularly rewarding to the observant American lawmaker, for here a nation reacted to the comic book problem by creating a censorship board and also by enacting a law banning publications which are an "obvious" and "serious" danger without the necessity of any previous censorship. The statute, the cases construing the statute, and the commentaries of legal writers are thus especially instructive to our lawmakers who may be faced with similar problems. The Germans have been quite aware of both the threat of comic books and that of undue censorship. The German legislators clearly foresaw the constitutional problems involved in the infringement on free speech necessarily inherent in this anti-comics statute. In fact, this statute was passed with the statement that it represented a limitation on certain provisions of the West German Constitution. Section 6 of the German statute seems to enact a test, somewhat analogous to the clear

¹⁰⁹ Berthold, Dr. F. J., 43 Heft (1577-1616) *Neue Juristische Wochenschrift* 1604 (1955).

¹¹⁰ *Id.* at 1605.

¹¹¹ *Ibid.*

and present danger test of Holmes, to preserve the maximum possible freedom of the press commensurate with suitable safeguards for impressionable adolescents.

Other nations of Europe and elsewhere have also realized the problems involved in comic books and their large-scale dissemination. The debates on comics prohibition in the Chamber of Deputies of Italy was watched with interest by the New York Legislative Committee to Study the Publication of Comics.¹¹² Sweden, the Netherlands, Portugal, Belgium, Switzerland, South Africa and Mexico have all taken steps against comic books.¹¹³ Agitation to stem their spread has been felt in South America, Southeast Asia and, in fact, in all areas of the globe. Only within the Soviet sphere is this problem not encountered. The Soviets view all media of communication as instruments designed to promote the Communist cause and, therefore, do not permit any unsupervised or unapproved publications to circulate.¹¹⁴ But in the rest of the world wherever the values of a free press are still respected, the influence of such juvenile literature has been felt. Neither the problems created by comics nor the methods used in the attempt to solve those problems are unique to any one nation or culture.

CONCLUSION

The seriousness of the moral dangers threatened by comic books and analogous types of sex and crime literature offered to the juvenile reader at every newsstand is emphasized by the international concern for this problem found throughout the world. U.N.E.S.C.O. has reported that comics are "turning the youth and adolescents to today into young ruffians and potential criminals."¹¹⁵ Here in the United States three separate Congressional committees have conducted investigations into various aspects of the juvenile literature-delinquency problem.¹¹⁶ The methods adopted to combat these influences in the various states and in other nations are of too recent origin to accurately determine their effectiveness with any degree of finality. But from these efforts some generalizations on the nature of the problem involved can be made.

Here in America, especially, the intelligent citizen is caught on the horns of a true dilemma. Historically, our respect for unfettered freedom of speech has been the hallmark of the American political system. Incorporated into our Constitution as the First Amendment and applied to state action under the Fourteenth Amendment, freedom of speech and

¹¹² Report of the New York State Joint Legislative Committee to Study the Publication of Comics, Leg. Doc. No. 64 (1952).

¹¹³ See WERTHAM, *supra* note 3 at 234-94.

¹¹⁴ SOMERVILLE, *SOVIET PHILOSOPHY*, Philosophical Library, New York, 1946, pp. 15-18.

¹¹⁵ Quoted in Feder, *supra* note 15 at 10.

¹¹⁶ Committee to Investigate Organized Crime in Interstate Commerce (81st Cong.); Subcommittee to Investigate Juvenile Delinquency (83d Cong.); Select Committee on Current Pornographic Materials (82d Cong.).

press are justifiably a part of our heritage we wish to preserve at all cost. But what is that cost? Wertham well describes what few even casually observant readers need hardly have described for them.

Whatever may be the merits of the issue of whether crime-sex literature for adolescents actually motivates juvenile delinquent activity, it is patently evident that juvenile delinquency shows no signs of abating. If in adhering too closely to our anti-censorship principles, we allow immature youths at their most impressionable state of development to be exposed to literature glorifying crime, brutality and sex degeneracy, we will have defeated our own ends, for a society where those concepts are dominant would have little respect for freedom of speech and press. Yet to move too far in the opposite direction toward censorship and governmental and extra-governmental "vigilante" measures, as some are willing to do, would risk what might be an even greater danger.¹¹⁷ As the English court said through Stable, J., in the *Warburg* case:

. . . [I]n our desire for a healthy society, if we drive the criminal law too far, further than it ought to go, is there not a risk that there will be a revolt, a demand for a change in the law, and that the pendulum may swing too far the other way and allow to creep in the things that at the moment we can exclude and keep out?¹¹⁸

Though this problem seems insolvable when viewed from the extremes, three basic proposals have been introduced by various governments. The first of these, the censorship board, is probably the most objectionable in view of our traditional standards. Although it is fairly common abroad, it has been resorted to only rarely in the United States. Many of the usual features of censorship are banned, however, by the Federal Constitution. The doctrine of prior restraint, so clearly enunciated by the United States Supreme Court in *Near v. Minnesota*, may be applied.¹¹⁹ That case held invalid a Minnesota statute permitting an injunction against anyone publishing "malicious, scandalous or defamatory" material as being in "operation and effect" a prior restraint. By way of dictum in the *Near* case, however, Chief Justice Hughes indicated there might be three exceptions involving war, sedition and obscenity. The latter exception was confirmed in recent Supreme Court cases.¹²⁰ The motion picture censorship system of Ohio was struck down by the United States Supreme Court, which cited the *Near* case in holding the censorship to be violative of the free speech provisions of the First and

¹¹⁷ See Deland, *supra* note 20 at p. 30.

¹¹⁸ 1 WEEKLY L. R. 1138, 1143 (1954), quoted in Williams, *supra* note 65 at 647.

¹¹⁹ 283 U. S. 697 (1931).

¹²⁰ *Roth v. United States*, 354 U.S. 476 (1957). Emerson, F. I., *The Doctrine of Prior Restraint*, 20 L. AND CONTEMP. PROB. 648 (1955).

¹²¹ *Superior Films, Inc. v. Dept. of Education of State of Ohio, Division of Film Censorship*, 346 U. S. 587 (1954).

Fourteenth Amendments.¹²¹ It is cogently arguable that the Georgia Literature Commission would meet the same fate if challenged, as it incorporates the similar features of broad, executive discretion applied to media of communication, even though there is no prior restraint in the strict sense.

A second type of legislative measure designed to curb the sale of objectionable literature is the outright prohibition of sales to minors of crime-sex comics and similar periodicals. Ohio's statute is of this type. The problems involved with this type of statute are two. The first concerns the necessity of using statutory language to define in as clear and as precise terms as possible the exact material prohibited. Vague, all-inclusive language will be held void as was the language of the New York statute in the *Winters* case. The second and perhaps more fundamental problem is concerned with what, if anything, can a state prohibit by use of its police powers. As comic books are written material they would appear to come under the protection of the First and Fourteenth Amendments, thus making any state regulation invalid. But Holmes' classic concept of "a clear and present danger," at least as this has been interpreted in various cases, clears this hurdle to a certain degree. According to Lockhart and McClure¹²² three significant factors govern the interpretation of the "clear and present danger" test today: the "clear" or "probable" danger, the relative seriousness of the evil sought to be prevented and, third, the value of freedom of expression in the context of the utterance being tested. If comic book regulation could meet this test, it would probably be held valid, provided it were enunciated with sufficient precision. In applying these three criteria to comics, it may be seen that whether there is a "clear" or "probable" danger of adolescent delinquent behavior resulting from the reading of comic books is a much mooted point. There is, however, at least tentative agreement, in the absence of sufficient scientific research, that some overt anti-social activity does result in part from the reading of crime-sex comic books. The relative seriousness of the evil of juvenile delinquency is readily apparent and this is the evil sought to be prevented by regulatory legislation. The third criterion, the value of freedom of expression in comic book publication, proposes a value judgment. Children should be taught to respect the rights of free speech and press, but this does not necessitate the toleration of license. Once the value judgment of this third criterion is made and the "clear and present danger" test, as it exists in its present form, applied, we still are without any exact formula to prescribe the extent of the prohibition. The "clear and present danger" test is not absolute but can serve only as a guide to policy formulation. In final consideration, it comes to a question of balancing of interests. "Policy judgment requires the alleged evils to society from (such) literature to be balanced against the value of the particular book and the value to

¹²² See Lockhart, *supra* note 17 at 366-7.

society of freedom to read and to write literature of this type."¹²³ It is submitted that examined in this light, statutory prohibition of crime-sex comics, if properly drawn, would be valid.

A third measure to combat comics is a partial synthesis of the first two. Legislation could be enacted permitting a declaratory judgment in a civil court on the issue of a certain publication's obscenity or moral danger with suppression of that publication following only from an adverse judgment.¹²⁴ Experience with such procedures have been seen in Massachusetts and in the forfeiture actions of the United States Customs. This type of procedure provides for action to be taken against the publication itself instead of a criminal charge against the dealer. There would, thus, be no problem of prior restraint as in action by a censorship board and some commentators believe that this would be the best possible solution.¹²⁵ It might be noted that this latter method would seem to be a worthwhile addition to the enforcement provisions of the Ohio comic book statute.

Much of the confusion in the general law of obscenity in relation to the regulation of juvenile literature results from the fact that too often courts and legislatures forget the actual purpose of the law. Comic book regulation it to protect youth; as such, it is not only valid but morally justified. Such regulation for the benefit of adults is not only of very questionable constitutionality but also morally objectionable. Havelock Ellis has stated that modern society needs pornography as an outlet.¹²⁶ This may be true, but that does not mean we should encourage impressionable youths to cultivate such tastes in the very years when their sense of values is in its most formative stage. Youths under eighteen should be protected during their vital, maturing years against undue exposure to crime, vice, brutality and sex degeneracy portrayed in its most attractive forms. Adults, however, should be free to read whatever literature their personal tastes and proclivities may indicate, provided the results are not direct outbursts of anti-social activity. These important differences between youths and adults must form the basis of the law.

¹²³ *Id.* at 391.

¹²⁴ See Lockhart, *supra* note 2 at 607.

¹²⁵ *Ibid.*

¹²⁶ 1954 CRIM. L. REV. 830.

¹²⁷ Struble, J., in *State v. Lerner*, 51 Ohio L. Abs. 321, 332 (1950), which held Ohio's statutory enactment of the obscene-in-part rule unconstitutional, declared:

My conclusion is that Ohio's obscene literature statute having been enacted for the preservation of the morals of the people of this state that it necessarily follows that the moral standards, moral concepts of the people of this state, as to what is obscene literature, is the only test allowable. It is the moral concept of the people as a whole that literature is obligated to respect. . . . A governmental policy that would withhold from all of us what is all right for most of us because it might be bad for some of us [youth] . . . would compel us to close up shop.

But although the state as *parens patriae* has a duty to protect its children from unnecessary evils, it cannot transcend the bounds of respect for freedom of speech. A balance must be struck and an attempt to do this has been made in the enactment of Ohio's relatively new crime comic book statute. Some of the language of this statute is still too broad for constitutional application.¹²⁸ One serious shortcoming is the outright prohibition of periodicals depicting unlawful acts of murder, killing, and so forth—the exact prohibition invalidated in the *Winters* case. This constitutional problem could probably have been avoided if the ban on publication of such material had been limited to that “which is provocative of corrupt morals, crime or juvenile delinquency.” This latter reference is presently in the statute but only as an independent, unrelated prohibition.

While the Ohio statute against comic books is apparently unconstitutional in part, it is, nevertheless, probably capable of some constitutional enforcement. The seeming loathness of Ohio officials to apply the law is unexplained. If this statute were enforced, and it must be presumed that the lawmakers intended it to be a vital force in the protection of youthful morality, many publications not technically describable as comic books would fall beneath the ban. In some localities, due to public pressure and to the administration of the industry's Code of Ethics, comic books have been exceeded in degree of objectionableness by lurid-covered pocket books and the newer, almost pornographic, “girlie” magazines. Both of these could readily come within the purview of the Ohio statute, which has the potential of being a strong, curative force in the campaign against juvenile delinquency.

To curtail the undue exposure of children to such materials, while concurrently maintaining the maximum freedom of press for the adult populace is the enlightened goal of these legislative enactments, in Ohio as well as throughout the world. By the restrained, intelligent use of such measures, great progress can be achieved.

John A. Hoskins

¹²⁸ OHIO REV. CODE §2903.10 (1953). See also *supra*, p. 519-20 for the exact wording of the Ohio statute.